Secti. II-27—100,000—21-5-52.

Revenue (195 48) Department.

ERIES.

G.O. No. 4001

Dated 20th November 1948

[Despatch Abstract.]

Tax - Madras General Sales Tax Act, 1939 - Finality of the orders under section 12 - Clarification - Orders - passed.

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
.Ms	2048	Rev	26.8.48				
"	901	"	20.11.48				
"	924	"	22.4.48				
"	2647	"	20.12.37				
"	1953	Home	20.5.37				

Further Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Dat

GOVERNMENT OF MADRAS
Revenue Department
Subject.

Madras General Sales Tax 1939 - Finality of the Order under Section 12 - Clarification.

Ref. T.No.4738/48-1

Madras. Dated 14th Sept.1948.

Khan Sahib Mohamed Sultan Mohideen Hussain Sahib Bahadur, B.A.,
Additional Joint Secretary, Board of Revenue, Chepauk
S. Ranganathan Esq., O.B.E., I.C.S.,
Commissioner of Land Revenue and Commercial Taxes

Read: G.O.Ms.No.901 Revenue, dated 20th April 1948
G.O.Ms.No.2048 Revenue, dated 26th August 1948.

Reference:

In G.O.No.Ms.901 Revenue, dated 20th April 1948 the Government have held that in the Madras General Sales Tax Act, 1939 there is no provision either for the Government or for the Board to review an order passed under section 12 of the Act. But in their orders No.2048 Revenue, dated 26th August 1948 they have discussed the merits of the assessment on Messrs. Hindustan Food Products, which was confirmed by the Board under section 12 of the Act, and have held that there was has been only one sale. In accordance with their finding they have also directed the refund of the amount of tax collected from the company. The Board submits that this direction is not quite consistent with their earlier orders in G.O.Ms.No.901 Revenue, dated 20th April 1948 referred to above.

While bringing the above conflicting orders to the notice of the Government the Board invites their attention to their findings in G.O.Ms.No.2647 Revenue, dated 26th December 1947. They have held that an authority competent to pass an order under a statute has,

in the absence of any express prohibition, the power to rescind, revoke, amend or vary his own order. They have, however, restricted the use of the inherent revisional powers by their executive instructions. In the Madras General Sales Tax Act 1939 the appellate orders under section 11(4) are final subject to the powers of revision under section 12. . There is, however, no such restriction in regard to the finality of the orders under section 12 of the Act. There is also no express provision prohibiting the Board from reviewing its own orders under section 12.

In the above circumstances, the Board requests that the Government may be pleased to clarify the legal position in regard to the review of the Board's orders under section 12 of the Act either itself or the Government.

2. The Board further submits that, pending the clarificatio sought in para one above, it is with-holding the orders of the Government in para one of G.O.Ms.No.2048 Revenue, dated 26th Augus 1948 directing the refund of the tax collected from Messrs. The Hindustan Food Productions.

/ ** **
for Additional Joint
Secretary.

To the Secretary to Government.
Revenue Department ---

Government of Madras

(Abstract)

Tax - Madras General Sales Tax Act, 1939 - Finality of the orders under section 12 - Clarification - Orders passed.

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Revenue Department

G.O.Ms.No.2851, Dated 29th November 1948

Read the following:--

G.O.Ms.No.2647 Revenue, dated 20th December 1937
G.O.Ms.No. 901 Revenue, dated 20th April 1948
G.O.Ms.No.2048 Revenue, dated 26th August 1948
From the Board of Revenue, Ref. T.No.4738/48-1, dated 14th September 1948.

Order:

The Government are advised that the position set out in G.O. Ms.No.901 Revenue, dated 20th April 1948 viz. that there is no provision either for the Government or for the Board to review an order passed under Sec. 12 of the Act is correct. The view held previously in G.O.Ms.No.2647 Revenue, dated 20th December 1937 that an authority competent to pass an order under a statute has, in the absence of any express prohibition, the power to rescind, revoke, amend or vary its own order, does not represent the correct legal position as at present obtaining.

2. The orders in G.O.Ms.No.2048 Revenue, dated 26th August 1948 directing the refund of tax to Messrs. Hindustan Food Products in respect of a certain turnover, are not inconsistent with the view held in para 1 above, as it is open to the Government to forego

~~forego~~ any sum due to them. The Government neither cancelled nor modified the orders passed by the Board under section 12 of the Act, nor directed the Board to cancel or modify its orders.

(By Order of His Excellency the Governor.)

V. K. Rao,
Deputy Secretary to Govern

To the Board of Revenue (Commercial Taxes)

(True copy)

R. Nagarajan
18.12
Office Assistant,
Madras Record Office.

aj/17.12

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